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Federal Communications Commission
445 12th Street SW
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Subject: Proceeding 92-264

It has been reported that the Commission is poised to adopt a rule at its December 18, 2007 meeting that would limit a cable operator from owning cable systems that serve more than 30 percent of all MVPD subscribers. The members of the Minnesota Cable Communications Association will be aggrieved by such a rule, and we strenuously object to its adoption.

The record in the Commission's cable ownership proceeding does not justify any limit on cable ownership nor could it given the state of competition in the MVPD market today. In 2001, when the D.C. Circuit rejected the prior 30 percent ownership limit, DBS companies, DirecTV and EchoStar, served approximately 16 million customers and had about 18 percent of the

MVPD market.[1] Today, DirecTV and EchoStar serve approximately 30 million customers and have about 31 percent of the MVPD market.[2]

Moreover, since 2001, new competitors have entered the MVPD market and new forms of competition have emerged. For example, AT&T and Verizon are now aggressively pursuing video customers in direct competition with cable operators.[3] Likewise, the Internet and advances in mobile technology have given consumers literally thousands of additional options for receiving video programming.

In short, the MVPD market is plainly much more competitive today than it was in 2001. Under these circumstances, the Commission cannot possibly justify the adoption of the very same 30 percent limit that the Court rejected in *Time Warner II.*

The Commission's decision is all the more astounding because the basis of the Court's rejection of the prior 30 percent limit was that it violated the First Amendment. When free speech rights are at stake -- as they clearly are here -- the Commission should view its authority narrowly. Instead, it appears that the Commission is taking an expansive view of its authority -- and one contrary to the record evidence -- in order to turn back the clock and reinstate the already discredited 30 percent cable ownership limit.

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1 *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd. 1244 ¶ 8 (2002).

2 *Compare* Press Release, The DIRECTV Group, Inc., *The DIRECTV Group Announces Third Quarter 2007 Results* 3 (Nov. 7, 2007) (reporting 16.56 million subscribers), *and* Press Release, EchoStar Communications Corp., *EchoStar Reports Third Quarter 2007 Financial Results* 1 (Nov. 9, 2007) (reporting 13.695 million subscribers), *with* SNL Kagan, *Media Money*, Sept. 18, 2007, at 6 (reporting 96.9 million total MVPD subscribers).

3 *See* Press Release, Verizon Communications Inc., *Verizon Reports Continued Success in 3Q 2007* (Oct. 29, 2007) (reporting 717,000 total FiOS TV customers); Press Release, AT&T Inc., *AT&T Delivers Strong Third-Quarter Results; Growth Highlighted by Robust Wireless Gains, Advances in Enterprise Services, Accelerated TV Ramp* (Oct. 23, 2007) (reporting 126,000 U-verse TV subscribers).

The Commission's proposed decision is also inexplicable because it so plainly contradicts the Commission's longstanding policy in favor of competitive parity. The Commission knows full well that we are in an era of convergence. Cable operators are providing a competitive alternative to local telephone service, just as telephone companies are providing an alternative to cable service. In this environment, it makes no sense to hamstring one of the competitors with an ownership limit that prevents it from realizing the economies of scale that it could achieve through the expansion of its networks, while leaving the other competitor free of any such limit. Yet, that is exactly what the proposed cable ownership limit would do -- cap cable's growth while allowing telephone companies to grow unfettered by any limit. The result of this competitive imbalance will be a reduction in competition, particularly the type of facilities-based competition that the Commission has always claimed it wanted. And, of course, this reduced competition will ultimately harm consumers.

There is no basis for the Commission to adopt the proposed 30 percent cable ownership cap. It is wrong on the facts, wrong on the policy, and wrong on the law. We urge the Commission not to adopt such a limit.

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